

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sara Hager	Team: Team # 5	CCRB Case #: 200502763	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/11/2004 , Friday, 03/11/2005 , Monday, 03/14/2005 8:20 PM	Location of Incident: § 87(2)(b)	Precinct: 71	18 Mo. SOL 9/14/2006	EO SOL 9/14/2006	
Date/Time CV Reported Tue, 03/15/2005 8:58 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 03/15/2005 8:58 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)		
§ 87(2)(b)		
§ 87(2)(b)		
§ 87(2)(b)		
§ 87(2)(b)		
§ 87(2)(b)		

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Philip Ditto	26831	932557	071 PCT
2. An officer			
3. SGT Eric Delman	01832	922228	071 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Vincent Schiavarelli	26649	933336	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Philip Ditto	Abuse: On March 11, 2005, PO Philip Ditto stopped and questioned § 87(2)(b), § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
B.POM Philip Ditto	Abuse: On March 11, 2005, PO Philip Ditto searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
C.POM Philip Ditto	Discourtesy: On March 11, 2005, PO Philip Ditto spoke obscenely and/or rudely to § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
D.SGT Eric Delman	Abuse: On March 14, 2005, SGT Eric Delman authorized the stop and question of § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
E. An officer	Discourtesy: On March 14, 2005, an officer spoke obscenely to § 87(2)(b)	§ 87(2)(b)
F. An officer	Abuse: On March 14, 2005, an officer searched § 87(2)(b)	§ 87(2)(b)
G. An officer	Force: On March 14, 2005, an officer used physical force against § 87(2)(b)	§ 87(2)(b)

## Synopsis

On March 15, 2005, § 87(2)(b) and § 87(2)(b) called the CCRB and filed a complaint against officers that had come into a barbershop on March 11, 2005, and March 14, 2005, located at § 87(2)(b) in Brooklyn. On March 11, 2005, PO Ditto (identified through the investigation) and his unidentified partner came to the barbershop. PO Ditto asked § 87(2)(b), § 87(2)(b) and § 87(2)(b) for their identification and then proceeded to look through private rooms in the back of the barbershop (Allegations A and B). While inside the barbershop PO Ditto allegedly cursed at § 87(2)(b) and § 87(2)(b) (Allegation C).

On March 14, 2005, PO Ditto came back to the barbershop along with two other officers, SGT Eric Delman and PO Vincent Schiavarelli (identified through the CCRB investigation). The officers asked § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) for identification (Allegation D). An unidentified officer grabbed, searched and cursed at § 87(2)(b) (Allegations E, F and G).

§ 87(2)(b), § 87(2)(g)

The age of this case is due to the fact that it was reassigned several times. This case was initially assigned to Investigator Marcella Luna. On August 9, 2005, Investigator Luna left the CCRB and the case was reassigned to Investigator Jerome Wells. On February 7, 2006, Investigator Wells left the agency and the case was reassigned to Investigator Sara Hager.

## Summary of Complaint

### **Incident on March 11, 2005**

§ 87(2)(b)

§ 87(2)(b) was interviewed at § 87(2)(b) on March 29, 2005 [Enc. 11 A-D].

§ 87(2)(b) § 87(2)(b), who is § 87(2)(b) § 87(2)(b) was unable to recall the exact dates of the incidents, but he stated that he believed that the first occurred on a Friday at approximately 8:30-9pm (the CCRB investigation identified the incident date as March 11, 2005). § 87(2)(b) stated that on March 11, 2005, two officers, PO Ditto (identified through the CCRB investigation) and a second unidentified officer, entered the barbershop and PO Ditto asked who was drinking beer. § 87(2)(b) stated that when the officers entered, he, § 87(2)(b), § 87(2)(b) and a number of customers were in the shop. § 87(2)(b) stated that when the officers entered, he and § 87(2)(b) were in the process of cutting a customer's hair. § 87(2)(b) also acknowledged that at the time, there was a bottle of beer on § 87(2)(b) counter. § 87(2)(b) believed that § 87(2)(b) responded to the officers that it was his beer on the counter. PO Ditto then asked § 87(2)(b) for his license, to which he showed the officers his barber license, which was hanging on the wall.

PO Ditto then asked § 87(2)(b) for his license, to which § 87(2)(b) replied that he did not have it. § 87(2)(b) stated that PO Ditto replied with a comment to the effect of, "you better provide your ID cause you could get locked up." § 87(2)(b) then retrieved his identification from his jacket pocket and presented it to PO Ditto. PO Ditto then approached § 87(2)(b) as he stood near his chair, which is second to last chair in the back of the shop, and asked him for his identification. § 87(2)(b) provided PO Ditto with his driver's license. Afterwards, PO Ditto asked him for his barber license, to which § 87(2)(b) informed PO Ditto that

he did not have one and that it was being processed. § 87(2)(b) believed that § 87(2)(b) was also asked for his barber license. § 87(2)(b) did not state that the barbershop was searched.

§ 87(2)(b) stated that after his identification was returned, the officer told him that he was going to “give § 87(2)(b) a break,” but that he would be back in two months. The officer then issued § 87(2)(b) a summons § 87(2)(a) 160.50. § 87(2)(b) estimated that the officers remained at the shop for approximately ten to 15 minutes.

§ 87(2)(b)

§ 87(2)(b), § 87(2)(b), was interviewed at § 87(2)(b) on March 29, 2005 [Enc. 8A-D].

§ 87(2)(b) the § 87(2)(b) located at § 87(2)(b) was unable to recall the exact dates of the incidents, but he stated that the first incident occurred on a Friday night at approximately 8:30-9pm (the CCRB investigation identified the incident date as March 11, 2005). § 87(2)(b) stated that during the first incident he was in the process of cutting a customer’s hair when two officers, PO Ditto and a second unidentified officer, entered his barbershop.

As the second unidentified officer remained standing near the front door, PO Ditto approached § 87(2)(b) and asked him for his identification. § 87(2)(b) first showed PO Ditto his barber’s license and then his driver’s license. § 87(2)(b) stated that PO Ditto also asked his customer to “lift your cape,” to which his customer complied. § 87(2)(b) stated that he asked why he needed to lift the cape, to which PO Ditto responded, “because he could be drinking.” According to § 87(2)(b) his customer was not drinking. The second unidentified officer then asked § 87(2)(b) and § 87(2)(b) for their identification and to show him their barber’s licenses. § 87(2)(b) confirmed that the barbers did not have barber’s license. § 87(2)(b) stated that the barbers were working under his license. According to § 87(2)(b) barbers with master’s licenses are allowed to have apprentices working under their license. § 87(2)(b) stated that § 87(2)(b) is currently in the process of getting his apprentice license.

PO Ditto then proceeded to the two rooms located in the back of barbershop, opened the doors, which were closed at the time, and entered the rooms. § 87(2)(b) stated that prior to him entering the rooms, PO Ditto stated, “turn down the fucking radio.” In the back of the barbershop are two rooms, one to the right-hand side and the second to the left-hand side. In the room to the right is a lounge area, which contains the sound-system for the shop, and to the left there is a kitchen. § 87(2)(b) stated that he only allows his employees to access these rooms. § 87(2)(b) stated that PO Ditto did not ask him and he did not give him permission to enter the rooms. Although § 87(2)(b) initially stated that PO Ditto was searching in the back room, he later clarified that from where he was standing, near the front of the store, he could not see into the back rooms. According to § 87(2)(b) nobody was in either of the rooms when PO Ditto entered them.

PO Ditto then issued § 87(2)(b) § 87(2)(a) 160.50. Although § 87(2)(b) denied that he or that anyone else was drinking, he acknowledged that there were bottles, including beer bottles, in the garbage cans located near each station. PO Ditto then told the other barbers that he would be back in three months, at which time they would need to have their barber’s licenses. The officers then departed from the location. § 87(2)(b) estimated that the officers remained at the shop for approximately 30-40 minutes.

§ 87(2)(b)

§ 87(2)(b), § 87(2)(b), was interviewed at § 87(2)(b) on March 29, 2005 [Enc. 14 A-D].

§ 87(2)(b) who has been § 87(2)(b), was unable to recall the exact dates of the incidents, but he stated that the first occurred on a Friday night, after 9pm, approximately three-four weeks prior. § 87(2)(b) stated that during the first incident, he, two other barbers, whom he identified as § 87(2)(b) and § 87(2)(b) and approximately three customers were in the shop when two officers, PO Ditto and a second unidentified officer, arrived. § 87(2)(b) stated that at that time, § 87(2)(b) had an open container of beer on his counter, but he was not drinking. § 87(2)(b)

§ 87(2) acknowledged that there was an open container of beer on his counter as well and that the customer in his chair was drinking a beer. § 87(2)(b) estimated that in total, there were approximately two or three open containers of alcohol in the shop at the time.

Upon entering the shop, PO Ditto requested that the barbers turn down the music and he asked the barber's for their identification. § 87(2)(b) stated that as he asked for the barber's identification, PO Ditto walked to the back of the shop and entered the back room located on the right-hand side, that he accessed through a closed door. Although § 87(2)(b) stated that he believed that PO Ditto "looked" through the room, he acknowledged that he could not see inside of the room when PO Ditto entered it. § 87(2)(b) stated that he, § 87(2)(b) and § 87(2)(b) provided PO Ditto with their identifications. § 87(2)(b) acknowledged that the music was not turned down, at which time PO Ditto stated, "turn the fucking music down." § 87(2)(b) stated that he then turned down the radio, which is located in the back of the shop on the right-hand side. § 87(2)(b) stated that PO Ditto also asked the barbers for their barber licenses. In response, § 87(2)(b) showed PO Ditto his "master license." According to § 87(2)(b) six barbers are allowed to work under § 87(2)(b) barber license. § 87(2)(b) acknowledged that he does not have a barber license.

§ 87(2)(b) estimated that the officers remained at the shop for approximately 15-20 minutes. During this time, PO Ditto issued § 87(2)(b) a summons § 87(2)(a) 160.50. § 87(2)(b) stated that PO Ditto also informed the barbers that he would be returning in three months and that at that time, the barbers needed their barber licenses. According to § 87(2)(b) during the time the officers were present, the second unidentified remained near the front door and he did not say anything.

§ 87(2)(b)

The following is a summary of a brief phone conversation with § 87(2)(b) on April 1, 2005 [Enc. 16A]. § 87(2)(b) identified § 87(2)(b) as a customer in the barbershop at the time of the incident.

§ 87(2)(b) identified himself as the customer who was in § 87(2)(b) chair at the time of the first incident. § 87(2)(b) stated that on the date of the incident, two officers, PO Ditto and a second unidentified officer, entered the barbershop and asked his barber, § 87(2)(b) if he was drinking a beer. § 87(2)(b) estimated that when the officers arrived, there were approximately three to four barbers in the shop, each of who were with a customer, and at least one customer was waiting. § 87(2)(b) acknowledged that there was a beer in the area, located between to barber stations, but it did not belong to § 87(2)(b). § 87(2)(b) also stated that PO Ditto asked him to lift up his cape and asked him if he had a beer. § 87(2)(b) denied that he was in possession of a beer. § 87(2)(b) did not know if other customers were asked to lift their capes. § 87(2)(b) also acknowledged that music was playing in the shop at the time. § 87(2)(b) described the volume of the music as being at a "moderate" level. § 87(2)(b) believed that the second unidentified officer asked for the music to be turned down.

§ 87(2)(b) stated that PO Ditto then "searched," meaning that the officer was looking around, through the shop, including in the back of the shop. § 87(2)(b) stated that PO Ditto entered into one of the rooms located in the back of the shop. According to § 87(2)(b) the door to the back room was open prior to the PO Ditto entering it. § 87(2)(b) estimated that PO Ditto remained in the room for a "couple of seconds."

§ 87(2)(b) stated that PO Ditto asked who owned the shop. § 87(2)(b) also stated that PO Ditto asked two of the barbers who were in the shop if they had a license and asked the barbers to provide identification. § 87(2)(b) stated that in response, § 87(2)(b) showed PO Ditto his license. § 87(2)(b) was then issued a summons. § 87(2)(b) stated that when the officers departed, PO Ditto said that he was going to come back and check the barbers. § 87(2)(b) believed that PO Ditto said that he was going to return to the shop the next week. § 87(2)(b) estimated that the officers remained at the shop for approximately 20-25 minutes.

## Incident on March 14, 2005

§ 87(2)(b)

The following Monday, March 14, 2005, at approximately 8:10pm, three officers, PO Ditto, PO Schiavarelli and SGT Delman returned to the barbershop. At the time, § 87(2)(b), § 87(2)(b), § 87(2)(b) and a new barber (identified through the CCRB investigation as § 87(2)(b)) were in the shop. Upon their entry, the officers asked § 87(2)(b) for his identification. PO Ditto then approached § 87(2)(b) and asked him if he worked in the shop, to which he responded that he did. PO Ditto then asked § 87(2)(b) for his license. § 87(2)(b) stated that he provided his identification to PO Ditto. § 87(2)(b) also believed that the officers asked for § 87(2)(b) identification.

§ 87(2)(b) stated that at the same time that he was asked for his identification, an unidentified officer asked § 87(2)(b) for his identification. § 87(2)(b) stated that when § 87(2)(b) reached for his left rear pocket to retrieve his identification, the unidentified officer responded, "Don't touch it." The unidentified officer then patted-down § 87(2)(b)'s waist area and entered into his pants and jacket pockets, removing his wallet. § 87(2)(b) clarified that he observed what he believed was the motion of the unidentified officer entering into § 87(2)(b)'s pockets and that he was not sure if he saw the unidentified officer removed § 87(2)(b) wallet). According to § 87(2)(b), § 87(2)(b) was calm throughout this process. The officers then removed § 87(2)(b) from the shop. § 87(2)(b) stated that from where he was standing inside of the shop, he could not observe what was happening with § 87(2)(b) outside. According to § 87(2)(b) there was not a physical struggle to get § 87(2)(b) outside.

Approximately one minute later, § 87(2)(b) walked out of the shop and asked PO Ditto, "What's the problem," reminded him that he previously said that he was going to come back in two months and told him that he believed that he was "harassing" him. § 87(2)(b) stated that during the time he tried to address him, PO Ditto kept his head down and then denied that he told § 87(2)(b) that he told him that he would be returning in two months.

§ 87(2)(b) was then issued a summons § 87(2)(a) 160.50. § 87(2)(b) stated that after he was given the summons, he walked away from the officers. § 87(2)(b) stated that § 87(2)(b) was also issued a summons § 87(2)(a) 160.50. According to § 87(2)(b) nobody was smoking in the shop at the time and § 87(2)(b) does not smoke.

On May 10, 2006, § 87(2)(b) was shown three photo arrays containing PO Ditto, PO Schiavarelli and SGT Delman. § 87(2)(b) was unable to identify any of the subject officers involved in this incident [Enc. A-F]

§ 87(2)(b)

§ 87(2)(b) stated that the Monday following the first incident, March 14, 2005, PO Ditto returned to the barbershop with two different officers, PO Schiavarelli and SGT Delman. At the time, § 87(2)(b), § 87(2)(b)'s wife, was waiting for him outside. When the officers arrived, § 87(2)(b) was in the process of closing the shop. An unidentified officer then grabbed § 87(2)(b) who was in the process of leaving the shop, by the shoulder area of his jacket and instructed him to go outside. § 87(2)(b) stated that prior to going outside, an unidentified officer searched § 87(2)(b) including into his pockets, and removed a DVD that he was carrying. An unidentified officer and PO Ditto then escorted § 87(2)(b) outside. § 87(2)(b) indicated that he did not observe the entire interaction that the officers had with § 87(2)(b) once he was removed outside. In addition to the unidentified officer and PO Ditto taking § 87(2)(b) outside, PO Ditto asked § 87(2)(b), § 87(2)(b) and § 87(2)(b) for their licenses. § 87(2)(b) acknowledged that he provided PO Ditto with his license.

During the second incident, § 87(2)(b), § 87(2)(b) and § 87(2)(b) were issued summonses. § 87(2)(b) was not issued a summons. § 87(2)(b) believed that each was issued summonses § 87(2)(a) 160.50. Of the three, § 87(2)(b) only knows of § 87(2)(b) as being smoker. § 87(2)(b) denied that any of them were smoking at the time of the incident. § 87(2)(b) stated that

people are not allowed to smoke in the barbershop. § 87(2)(b) estimated that the officers remained at the shop for approximately 30 minutes.

On April 17, 2006, § 87(2)(b) was shown three photo arrays containing PO Ditto, PO Schiavarelli and SGT Delman. § 87(2)(b) was unable to identify any of the subject officers involved in this incident [Enc. 9A-F].

§ 87(2)(b)

§ 87(2)(b), § 87(2)(b) was interviewed at § 87(2)(b) on March 29, 2005 [Enc. 15A-C].

Although he was aware of the fact that there were two incidents at the barbershop located at § 87(2)(b) § 87(2)(b) who § 87(2)(b) stated that he was only present during one of the incidents (identified through the investigation to be March 14, 2005). § 87(2)(b) stated during the March 14, 2005, incident two officers, PO Ditto and an unidentified officer, entered the barbershop.

Upon their arrival, the officers stopped § 87(2)(b) who was in the process of putting on his jacket and standing in the middle of the shop, instructed him not to move and asked him for his identification. § 87(2)(b) stated that the unidentified officer also told § 87(2)(b) to “get your hands out of your pockets.” § 87(2)(b) stated that § 87(2)(b) provided the unidentified officer with his identification and complied with the request to remove his hands from his pockets. § 87(2)(b) did not mention that § 87(2)(b) was searched.

§ 87(2)(b) stated that the officers then asked everyone else for their identification, with PO Ditto specifically asking § 87(2)(b) for his. § 87(2)(b) believed that he and § 87(2)(b) were the only individuals to provide their identification. Afterwards, the officer returned outside. § 87(2)(b) estimated that the officers remained outside for approximately 20 minutes. § 87(2)(b) then went outside and asked the officers what was happening. § 87(2)(b) was then issued a summons for § 87(2)(a) 160.50 § 87(2)(b) stated that in addition to him being issued a summons, § 87(2)(b) and § 87(2)(b) were also issued summonses § 87(2)(a) 160.50

§ 87(2)(b)

§ 87(2)(b) stated that PO Ditto and two different officers, PO Schiavarelli and SGT Delman, returned to the shop the following Monday, after 8 PM. § 87(2)(b) stated that at the time, he, § 87(2)(b), § 87(2)(b) and another barber whom he could not identify by name (identified to be § 87(2)(b) through the CCRB investigation) were present at the shop. § 87(2)(b) stated that when the officers arrived, he was in the process of leaving the shop and the shop was in the process of closing.

Upon their arrival, an unidentified officer stopped § 87(2)(b) and asked him for his identification. When he reached into his back pocket to retrieve his identification, the unidentified officer told § 87(2)(b) not to touch his pocket. The unidentified officer started “digging” into § 87(2)(b) pockets and asked him if he had narcotics. § 87(2)(b) stated that he informed the unidentified officer that he does not smoke and that he does not sell drugs. According to § 87(2)(b) PO Ditto and another unidentified officer also asked § 87(2)(b) and § 87(2)(b) for their identification.

Approximately three minutes later, the officers asked § 87(2)(b) to step outside. Upon arriving outside with the unidentified officer, § 87(2)(b) stood next to the unmarked police vehicle that the officers arrived in, which was parked near the fire hydrant in front of the shop. § 87(2)(b) stated that while outside he asked the unidentified officer, “Why are they doing this?” § 87(2)(b) stated that in response to his inquiries, the unidentified officer used “bad words” when addressing him. § 87(2)(b) stated that the unidentified officer made comments to the effect of, “Don’t fucking talk when I talk.” § 87(2)(b) stated that during this time, his demeanor was “cool” because he was “scared.” § 87(2)(b) denied that he cursed when addressing the officers.

As he stood outside, § 87(2)(b) was issued summonses § 87(2)(a) 160.50 § 87(2)(b) stated that he was not smoking at the time and he stated that he is not even a smoker. § 87(2)(b) stated that § 87(2)(b) and § 87(2)(b) were also issued summonses § 87(2)(a) 160.50 § 87(2)(b) estimated that the officers remained at the shop for approximately 25 minutes.

On May 6, 2006, the investigator contacted § 87(2)(b). § 87(2)(b) stated that he did not remember the officer that grabbed, searched and cursed at him and he would not be able to identify this officer from a photo array.

### **Additional Victims Not Interviewed**

On March 23, 2005, Investigator Luna spoke with § 87(2)(b). An appointment for March 29, 2005, was scheduled to interview § 87(2)(b) and all the other people who were present during the incidents at the barbershop. § 87(2)(b) agreed to inform all the people of this interview. § 87(2)(b) and § 87(2)(b) did not appear for that interview. On April 1, 2005, § 87(2)(b) called the CCRB and scheduled an interview for April 6, 2005. § 87(2)(b) did not appear for that interview. On April 8, 2005, Investigator Luna contacted § 87(2)(b) and he rescheduled his interview for April 14, 2005. § 87(2)(b) did not appear for that interview and did not call to cancel.

On March 23, 2005, April 5, 2005, April 8, 2005, Investigator Luna called and left a voicemails for § 87(2)(b). On March 28, 2005 and June 3, 2005, contact letters were sent to § 87(2)(b). § 87(2)(b) did not contact the CCRB.

### **Results of Investigation**

#### **Police Officer Statements**

##### *PO Philip Ditto, 71<sup>st</sup> Precinct*

PO Philip Ditto was interviewed at the CCRB on July 21, 2005 [Enc. 18A-B].

PO Ditto stated that on March 11, 2005, he was assigned to a footpost on § 87(2)(b) within the confines of the 71st Precinct. PO Ditto was in uniform and working by himself. PO Ditto stated that there were no other officers present during this incident. In PO Ditto's memo book he noted that at 9:30 PM, he conducted a business inspection of § 87(2)(b) and issued three summonses [Enc. 17A-F].

PO Ditto stated that on March 11, 2005 at approximately 9:30 PM, he walked past a barber shop located at § 87(2)(b) and observed a male (later determined to be § 87(2)(b)) holding a beer in a glass bottle. PO Ditto saw this through a window and did not see § 87(2)(b) drink the beer. PO Ditto observed this for 1-2 minutes. § 87(2)(b) was cutting a customer's hair. There were two other men in the shop cutting hair and several customers. PO Ditto entered the barbershop through the front door and conducted a business inspection. PO Ditto stated this entails checking the shop to make sure that it is orderly and to check barbers licenses. PO Ditto has conducted numerous business inspections. PO Ditto stated that the owner had a certificate, but the other two males did not. § 87(2)(b) explained that they were under his guidance, but could not produce any paperwork to substantiate this claim. PO Ditto stated that it is necessary for barbers to have a certificate with their name and "official seal." PO Ditto stated that § 87(2)(b) was irate, stating that he was not drinking the beer and angry that PO Ditto had entered his business. The other two barbers were calm. PO Ditto asked the three barbers for their identification, which they provided. PO Ditto walked to the back of the shop to get the identification from the men and did not enter the two back rooms. PO Ditto did not search the location. PO Ditto initially stated that he issued three summonses, one § 87(2)(a) 160.50 and two § 87(2)(a) 160.50. However, upon further questioning PO Ditto stated that he only issued one summons that day § 87(2)(a) 160.50. PO Ditto checked for open warrants for the three individuals with negative results.

PO Ditto stated that he did not use profanity or any strong language during the March 11, 2005 incident. PO Ditto did not frisk or search any individuals and never asked any customers to lift up the hair cutting cape. PO Ditto stated that he did not give the barbers a time frame for them to get their licenses.

PO Ditto stated that on March 14, 2005, he was assigned to a conditions auto unit with SGT Eric Delman and PO Vincent Schiavarelli. PO Ditto was in uniform and could not recall if he was assigned to a marked or unmarked police vehicle. In PO Ditto's memo book he noted at 8:10 PM on March 14, 2005, he conducted a business inspection of § 87(2)(b) and four summonses were issued [Enc. 17A-F].

PO Ditto stated that while he was outside he observed a § 87(2)(b) smoking inside a barbershop located at § 87(2)(b) in Brooklyn. PO Ditto stated he made the decision to enter the barbershop and conduct the business inspection. PO Ditto, SGT Delman and PO Schiavarelli entered the shop and PO Ditto immediately went to § 87(2)(b) and asked for his identification, which he provided. PO Ditto asked § 87(2)(b) if he was an employee and § 87(2)(b) responded that he was. There were 3 other males working inside the shop including the owner, § 87(2)(b). There were customers also, however, PO Ditto could not recall how many. PO Ditto asked two unidentified males that were working (later determined to be § 87(2)(b) and § 87(2)(b) for their identification, which they provided. § 87(2)(b), § 87(2)(b) and § 87(2)(b) did not have their work certificates. PO Ditto stated that he did not ask § 87(2)(b) for his identification because he had a certificate and there was no reason to check his identification. PO Schiavarelli and SGT Delman did not ask any individuals for identification. PO Ditto and PO Schiavarelli went outside to the RMP and ran a warrant check for all the individuals, which came back negative. While outside § 87(2)(b) and § 87(2)(b) came outside of on their own accord. § 87(2)(b) was irate that PO Ditto had come to his workplace. PO Ditto could not recall anything else that § 87(2)(b) said and could not elaborate on his demeanor.

PO Ditto stated that § 87(2)(b) was not frisked or searched at any time during the incident. PO Ditto stated that neither he nor his partners cursed during the incident. PO Ditto issued a total of 4 summonses on this date. § 87(2)(b) received a summons § 87(2)(a) 160.50. § 87(2)(b) and § 87(2)(b) were issued summonses § 87(2)(a) 160.50.

#### *SGT Eric Delman*

Sergeant Delman was interviewed at the CCRB on March 14, 2006 [Enc. 120A-B].

On March 14, 2006, SGT Delman stated that he was the conditions sergeant for the 71st Precinct. SGT Delman was working with PO Philip Ditto and PO Vincent Schiavarelli. SGT Delman was in uniform and assigned to an unmarked RMP. SGT Delman did not have any memo book entries regarding this incident [Enc. 19A-B].

SGT Delman stated that on March 14, 2006, PO Ditto stated that he wanted to conduct a business inspection at § 87(2)(b). PO Ditto and PO Schiavarelli went inside the business and SGT Delman stayed outside. SGT Delman did not see or hear anything that happened while the officers were inside the barbershop. A few people walked out of the business with the officers. SGT Delman did not know if the civilians came out of the business of their own accord or if the officers asked them to step outside. SGT Delman was not privy to the conversation between the civilians and the officers. SGT Delman stated that PO Ditto and PO Schiavarelli did not use any discourteous language while they were outside. The civilians were not searched nor was there any physical contact with the officers. SGT Delman had no interaction with any civilians on the scene. SGT Delman could not recall how long the officers were on the scene.

SGT Delman stated that a business inspection of a barbershop consists of checking that all barbers working inside the shop are certified by the state of New York. Operating without a license is a summonsable offense.

#### *PO Vincent Schiavarelli*

PO Vincent Schiavarelli was interviewed at the CCRB on March 20, 2006 [Enc. 22A-B].



PO Schiavarelli stated that on March 14, 2005, he was working with SGT Eric Delman and PO Philip Ditto. PO Schiavarelli was in uniform and assigned to an unmarked police car § 87(2)(b). PO Schiavarelli was assigned to the 71st Precinct conditions unit. PO Schiavarelli's memo book stated that at 8:10 PM on March 14, 2005, there was a business inspection at § 87(2)(b). PO Schiavarelli issued summonses to § 87(2)(b) and § 87(2)(b). PO Schiavarelli could not recall the nature of these summonses. PO Schiavarelli had no independent recollection of this incident, however, he did state that his only interaction was with § 87(2)(b) and § 87(2)(b) otherwise he would have noted it in his memo book [Enc. 21A-C].

PO Schiavarelli stated that while conducting a business inspection a supervisor must be present inside the business at the time of the inspection.

## Police Records

### *Summonses*

On March 11, 2005, 9:30 PM, PO Philip Ditto issued a summons to § 87(2)(b) § 87(2)(a) 160.50. On March 14, 2005, at 8:10 PM, PO Philip Ditto issued a summons to § 87(2)(b) § 87(2)(a) 160.50. On that date and time PO Vincent Schiavarelli issued a summons to § 87(2)(b) and § 87(2)(b) § 87(2)(a) 160.50.

### *SPRINT*

According to the SPRINT, on March 11, 2005, at 9:27 PM, there was a business inspection and summonses issued. There was a warrant check for § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b). Officers were on the scene until 9:54 PM. On March 14, 2005, at 8:04 PM, an impact unit from the 71st Precinct issued summonses and was on the scene until 8:27 PM [Enc. 24A-B].

### *Roll Call*

The 71st Precinct Impact roll call for March 11, 2005, indicated that PO Philip Ditto worked an overtime tour by himself [Enc. 25A]. The roll call from the 71st Precinct on March 14, 2005, indicated that PO Schiavarelli was assigned to a conditions unit and SGT Delman was the conditions supervisor. PO Ditto was assigned to a patrol unit [Enc. A-H].

## Summons Dispositions

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

## Criminal Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian CCRB History**

A search of CTS for § 87(2)(b) revealed that he was listed as a victim in CCRB § 87(2)(b). § 87(2)(b)

A search of CTS for § 87(2)(b), § 87(2)(b) and § 87(2)(b) resulted in a negative finding [Enc. 6A-D].

### **Officer CCRB History**

PO Philip Ditto and PO Vincent Schiavarelli have been employed with the NYPD for two years and do not have any substantiated allegations on their CCRB histories. SGT Eric Delman has been employed with the NYPD for seven years and does not have any substantiated allegations on his CCRB history [Enc. 2A-C].

## **Conclusions and Recommendations**

### **Disputed and Undisputed Facts**

It is not in dispute that on March 11, 2005, PO Philip Ditto conducted a business inspection of a barbershop located at § 87(2)(b). PO Ditto issued § 87(2)(b) a summons § 87(2)(a) 160.50. § 87(2)(g)

It is not in dispute that on March 14, 2005, PO Ditto, PO Schiavarelli and SGT Delman were at § 87(2)(b) for a business inspection. PO Ditto issued § 87(2)(b) two summonses § 87(2)(a) 160.50. PO Schiavarelli issued summonses to § 87(2)(b) and § 87(2)(b) § 87(2)(a) 160.50 § 87(2)(g)

### **Officer Identification**

PO Ditto was identified as the officer that was present on the scene for the March 11, 2005 incident from the summons he issued to § 87(2)(b). The roll call for the 71st Precinct did not indicate that PO Ditto had a partner on that date. PO Ditto stated in his CCRB interview that he was working alone on March 11, 2005.

PO Ditto and PO Schiavarelli were identified as two officers on the scene for March 14, 2005, from the summonses issued to § 87(2)(b), § 87(2)(b) and § 87(2)(b). In PO Ditto and PO Schiavarelli's CCRB statements they confirmed that they were also working with SGT Delman on March 14, 2005.

### **Credibility**

*PO Ditto, PO Schiavarelli and SGT Delman*

§ 87(2)(g)

§ 87(2)(g)

SGT Delman stated that he was not involved in the incident and did not have any interaction with any civilians on March 14, 2005. Statements from civilians claimed that he was involved in the incident.

§ 87(2)(g)

§ 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Only § 87(2)(b) alleged that he was searched on March 14, 2005. § 87(2)(b) stated that he thought § 87(2)(b) was frisked, but he was not certain. § 87(2)(b) and § 87(2)(b) did make mention that § 87(2)(b) was frisked or searched.

Secondly, § 87(2)(b) and § 87(2)(b) alleged that PO Ditto cursed at them and told them to turn down the radio. § 87(2)(b) stated that PO Ditto instructed them to turn down the music, but did not claim that PO Ditto cursed at them. § 87(2)(b) did not allege this discourtesy.

Furthermore, § 87(2)(b) alleged that PO Ditto searched two rooms in the back of the barbershop while § 87(2)(b) and § 87(2)(b) alleged that PO Ditto only searched one room. § 87(2)(b) also claimed that the door to the room was open, while § 87(2)(b) and § 87(2)(b) stated that it was closed. § 87(2)(b) did not make any allegations regarding a search of the barbershop.

§ 87(2)(g)

**Allegation A: On March 11, 2005, PO Philip Ditto stopped and questioned § 87(2)(b), § 87(2)(b) and § 87(2)(b)**

PO Ditto stated that as he was walking by the barbershop located at § 87(2)(b) he witnessed § 87(2)(b) holding a beer bottle. § 87(2)(b), § 87(2)(b) and § 87(2)(b) all admitted that there were empty beer bottles inside the shop. § 87(2)(b), § 87(2)(g)

Additionally, while inside the shop he requested identification from § 87(2)(b) and § 87(2)(b) New York Administrative Code mandates, “No person shall hereafter carry on or conduct or transact business in this state under any name or designation other than his or its real name [Enc. 2A]. § 87(2)(b), § 87(2)(g)

**Allegation B: On March 11, 2005, PO Philip Ditto searched § 87(2)(b) in Brooklyn.**

It is not in dispute that PO Ditto entered the barbershop at § 87(2)(b). However, § 87(2)(b), § 87(2)(b) and § 87(2)(b) stated that PO Ditto looked into private rooms in the back of the barbershop. According to Kamins, “New York Courts have uniformly held that a police officer may enter commercial premises during regular business hours... There are certain areas, however, within commercial or business premises which have been held to constitute “private” area. As a result, the police are not authorized to enter these sections because of a person’s reasonable and legitimate expectation of privacy (Kamins, Barry: *New York Search and Seizure (2005)*, pg. 500) [Enc. 3A]. § 87(2)(b), § 87(2)(g)

**Allegation C: On March 11, 2005, PO Philip Ditto spoke obscenely to § 87(2)(b) and § 87(2)(b)**

§ 87(2)(b) alleged that PO Ditto stated, “Turn down the fucking radio.” § 87(2)(b) claimed that PO Ditto said, “Turn the fucking music down.” § 87(2)(g) § 87(2)(b) and § 87(2)(b) did not make that allegation. PO Ditto stated that he did not make any discourteous

comments. § 87(2)(g)

**Allegation D: On March 14, 2005, SGT Eric Delman authorized the stop and question of § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b)**

SGT Delman stated that on March 14, 2005, PO Ditto said he wanted to conduct a business inspection of § 87(2)(b) § 87(2)(g). PO Ditto and PO Schiavarelli asked § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) for their identification. § 87(2)(b), § 87(2)(g). New York Administrative Code mandates, “No person shall hereafter carry on or conduct or transact business in this state under any name or designation other than his or its real name [Enc. 2A]. § 87(2)(b), § 87(2)(g)

**Allegation E: On March 14, 2005, an officer spoke obscenely to § 87(2)(b)**

**Allegation F: On March 14, 2005, an officer searched § 87(2)(b)**

**Allegation G: On March 14, 2005, an officer used physical force against § 87(2)(b)**

There were three officers present during the incident on March 14, 2005. § 87(2)(b) and § 87(2)(b) could not identify the officer that “grabbed” § 87(2)(b) and searched him. On May 5, 2006, the investigator called § 87(2)(b). § 87(2)(b) stated that he would not be able to identify the officer that searched him and rudely spoke to him. SGT Delman, PO Ditto and PO Schiavarelli all denied that they grabbed, searched or spoke rudely to § 87(2)(b) § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: